

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

July 1, 2015

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, July 1, 2015 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, Mr. Alan Doucet first alternate and Mr. George Alzaibak second alternate.

Also present were: Ms. Stephanie Federico, Esq., Town Solicitor, Neil Hall, Building Official, and Ms. Sally Ferreira, Court Reporter.

1. A reconsideration will be held on a petition filed by Bruce Manuel of Tiverton, RI requesting a variance to Article V Section 1 and Article V Section 2.c. in order to maintain a previously constructed single family dwelling at 45 Willow Street, Tiverton, RI being Plat 201 Lot 110 on Tiverton Tax Assessor's maps closer to the front property line than the front yard setback minimum of 25 feet and located in a R60 zoning district.

The Chairwoman stated there have been some circumstances that will make this matter moot and she turned the matter over to Ms. Federico.

Ms. Federico stated Mr. Manuel has come into compliance with the zoning setback by removing 15 inches of his foundation. So at this point in time, the certificate of occupancy and all necessary permits have been issued by the Building Official and this matter is no longer before the board.

2. A petition has been filed by Rachel & Sean Frodyma of Tiverton, RI requesting a variance to Article XIV Section 7.b.(2) of the Tiverton Zoning Ordinance in order to conduct a yoga studio in a legal non-conforming structure which was previously used as an office space located at 2490 Main Road, Tiverton, RI being Plat 409 Lot 153 on Tiverton Tax Assessor's Maps whereby a use variance is required in order to change a non-conforming commercial use to any other non-conforming use in a R80 zoning district.

The Chairwoman stated this matter was heard last month and there was some additional information that the Board needed. Mr. and Mrs. Frodyma applied for a use variance for a 80,000 plus or minus square foot lot in an R80 zone that has been zoned commercial. The Chairwoman went on to say she spoke with Attorney Desisto earlier this afternoon and asked Ms. Federico to provide the details for the record.

Ms. Federico stated there are two pieces of information that the Board was able to acquire since the last meeting. One is a letter from the applicant indicating that quote, "it is our intent for the yoga studio to provide retail sales of yoga mats, yoga blocks and straps, yoga clothing and accessories and essential oils. We will also have yoga classes including donation yoga and community yoga for approximately two to three hours per day." Ms. Federico went on to say this changed the business plan to be more retail in nature rather than service in nature. Ms. Federico informed the Board there was a Zoning Board decision from October 4th of 1989 where this property was before the Zoning Board in an effort to allow for a commercial dressmaking shop and tailor shop. In the decision, it's quoted as saying, "Ms. Durfee made a motion that general retail and activities be permitted on the second floor at Main Road being Block 117, Card 12, and that interpreting the word general retailing, it will encompass definition of general retail as it appears in Town Zoning Act." Ms. Federico concluded by saying based upon that, it was a unanimous decision of the Zoning Board and their legal opinion that the yoga business may operate by right.

3. A petition has been filed by Cellco Partnership d/b/a Verizon Wireless c/o McLane Law Firm, Ryan J. Swartz, Esquire requesting a special use permit to Article IV Section 5.d. of the Tiverton Zoning Ordinance in order to construct a 150' telecommunications tower for the installation of wireless telecommunications equipment by applicant and to promote collocation for other wireless carriers located at 500 Eagleville Road, Tiverton, RI being Plat 205 Lot 104 on Tiverton Tax Assessor's Maps and located in an Industrial zoning district.

Decision:

Attorney Christopher Swiniarski was present on behalf of the petitioners. The Chairwoman stated this matter is scheduled for deliberation and voting. Mr. Swiniarski furnished some draft findings of fact and conclusions of law that the Board received earlier.

The Chairwoman stated for the record that the voting members on this petition will be herself, Mr. Dick Taylor, Mr. David Collins, Mr. Jay Jackson, and Ms. Wendy Taylor-Humphrey who were the members sitting on all of the meetings.

Mr. Collins opened deliberations by stating he read the findings and finds them pretty accurate and agrees with them. Mr. Jackson stated he agrees with Mr. Collins and further stated there's been no expert to say anything opposite of what they presented to us. Mr. Taylor stated the RF engineer addressed the issues that are pertinent to the Board and went on to say they lowered the height of the tower by 20 feet.

The Chairwoman stated the Board has met several times on this issue and there was certainly a reluctance by the Board for a 150 foot tower which was the original request from Cellco but they have revised their plan to try to conform with the Board's request and amended their petition to the 130 feet. The Chairwoman went on to say the petitioner demonstrated the gap and substantial coverage through testimony, photos, and simulated photographs, and they have indicated that this is the most feasible method to address the gap in coverage.

The Chairwoman reminded the Board the only matter that's still on the table and need of discussion is whether the Board wants to go with the giant Christmas tree or whether the Board wants to go with the tower, the platform version which photographs have been provided of both of those. Mr. Taylor added he would rather see the proposed 60,000 square foot warehouse under the tower built back further on the property away from the buildings.

Ms. Taylor-Humphrey stated she is not completely convinced that the gap of coverage was significant. Ms. Taylor-Humphrey went on to say the petitioner said they really weren't servicing primarily Fall River, but in her opinion the testimony was clear that Fall River was going to be very clearly more serviced than Tiverton residents.

Mr. Doucet stated he wants to go on record as saying that the Board never heard solid numbers on population, customer, shortfall of service, percent of market share, and all those things are critical in defining what the petitioner's needs are. Mr. Doucet went on to say that further makes him believe that this is going to service Fall River far more than it's going to service Tiverton.

Mr. Taylor stated when this was first presented with the 150 foot tower, the figures that were given showed that coverage for Fall River residents would be improved rather than Tiverton residents, but once they lowered the tower down another 20 feet the numbers changed.

Mr. Collins made a motion to grant the request for special use and for a variance for the tower at the address indicated on the grounds that their expert witness, the RF engineer, has shown models that demonstrate that there is a gap and an additional model showing that with the proposed tower at the particular location and given the topography of Tiverton, the proposed tower will eliminate the gap that they're concerned about and, therefore, they meet the requirements for these two types of relief. Mr. Collins added he would accept the proposed findings as drafted and presented. Mr. Taylor seconded. Voting in favor: Chairwoman Ms. Lise Gescheidt, Mr. Jay Jackson, Mr. Dick Taylor and Mr. David Collins. Voting against: Ms. Wendy Taylor-Humphrey. The motion carried.

4. A petition has been filed by Cellco Partnership d/b/a Verizon Wireless c/o McLane Law Firm, Ryan J. Swartz, Esquire requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a 150' telecommunications tower for the installation of wireless telecommunications equipment by applicant and to promote collocation for other wireless carriers located at 500 Eagleville Road, Tiverton, RI being Plat 205 Lot 104 on Tiverton Tax Assessor's Maps exceeding maximum height allowed in an Industrial zoning district.

Decision:

Attorney Christopher Swiniarski was present on behalf of the petitioners. The Chairwoman stated this matter is scheduled for deliberation and voting. Mr. Swiniarski furnished some draft findings of fact and conclusions of law that the Board received earlier.

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Gescheidt, Mr. Jay Jackson, Mr. Dick Taylor and Mr. David Collins. Voting against: Ms. Wendy Taylor-Humphrey. The motion carried.

5. A petition has been filed by Diane F. Wagner of Tiverton, RI requesting a variance to Article IV Section 16.a. & 16.b.(1) of the Tiverton Zoning Ordinance in order to permit her daughter, who is 50 plus years of age with a mental disability, to reside with her, an age qualified individual, at 50 Cardinal Court, Tiverton, RI being Plat 202 Lot 139-116 in Country View Estates located in a R60 zoning district whereby residency is limited by persons 55 years of age or older.

Jim Wagner the petitioner's son was present along with his mother Diane Wagner. Ms. Taylor-Humphrey asked if counsel could clarify what basis this Board has to invoke any zoning authority. Ms. Taylor-Humphrey stated she was unable to find information that the Board has the authority to hear this matter. Ms. Taylor-Humphrey went on to say she was under the impression that Country View Estates has a homeowner's association or a deed restriction, or some sort of by-laws that should be brought before their internal board because this is a private development. Ms. Federico replied that she had discussions with the Building Official on this matter. Ms. Federico went on to say she has not reviewed the homeowner's association documents so she cannot comment on that matter. The Building Official commented that there is a homeowner's association so they are the ones that should be addressing this. Mr. Collins commented it doesn't seem like there's an ordinance that they're seeking relief for.

The Chairwoman commented the only statute that seems to be applicable is the definition of who can live there. Mr. Alzaibak asked didn't the Zoning Board put these ordinances on here when they were building the project and the Chairwoman replied it was the Town Council and the Zoning Board who would have made recommendations.

Mr. Wagner stated according to Country View, they say that's not their rule that it's a town rule or town ordinance and so he has to petition to the town. Mr. Wagner went on to say the owners of Country View Estates, the management, is in favor of this. Mr. Wagner further stated he would like to present a letter from Camelot Realty who represents Country View Estates documenting that they have no objection.

Ms. Federico reminded the Board there are very specific variances and special use permits that the Board can grant. Ms. Federico went on to say when you're looking specifically at this ordinance definition, there isn't anything there and so you can't do a cross reference. Ms. Federico suggested perhaps something can be proposed to the Town Council as far as purported amendment to the ordinance.

Mr. Alzaibak suggested that this petition be continued to next month to give legal counsel time to review this matter. Ms. Federico replied if the Board would like her to do further research and draft a written opinion, she would be happy to do that. Ms. Taylor-Humphrey stated it's the

burden of the petitioner to prove what they need to do and objected to legal counsel spending extra time making their case for them.

Mr. Ed Roderick of 19 Sparrow Drive, Tiverton also known as Country View Estates gave a brief history of Country View Estates. Mr. Roderick also stated he is the past president of the Town Council. Mr. Roderick stated Country View Estates has been cited in the past for violating the 55 and older ordinance and further stated the homeowner's association does not have purview or authority to make that decision, that that is only based on the ordinance and the ordinance cannot change that. Ms. Taylor-Humphrey and Mr. Alzaibak asked what ordinance. Mr. Roderick answered the ordinance that was set up to create and allow persons 55 years of age or older to reside at Country View Estates. Mr. Collins responded nobody knows what it is and the Chairwoman added it's just a definition. Ms. Taylor-Humphrey stated it doesn't state in the statute this Board can do anything about that.

Mr. Roderick stated if the Board grants this, this will open the door to allow any person with a disability whether seen or unseen to be allowed in. It could be grandparents who have custody of their disabled grandchildren. The Chairwoman stated she does not want to dismiss this petition without a little further scrutiny and suggested that legal counsel look into this and give the Board an opinion on whether this Board has the authority to hear this petition. Mr. Collins added the Board doesn't want to go ahead and do something we don't have the authority to do. Ms. Federico responded she will prepare a memorandum and distribute it to the Board prior to the next hearing.

Mr. Alzaibak made a motion for legal counsel to prepare an opinion to look at the facts if this Board can hear this petition. Ms. Taylor-Humphrey seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Mr. David Collins and Ms. Wendy Taylor-Humphrey.

ADMINISTRATIVE ISSUES:

The minutes of the June meeting will be voted at the August 5th, 2015 meeting.

Ms. Federico stated she has been reviewing and getting up to speed on all the Board's litigation matters and she will prepare a report for the Board. The Chairwoman replied the Board will discuss that report at the August 5th, 2015 meeting.

There was no further discussion. Mr. Collins made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Mr. David Collins, Ms. Wendy Taylor-Humphrey, Mr. Alan Doucet and Mr. George Alzaibak.

The Zoning Board meeting concluded at 7:45 p.m.

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 7 pages of the Tiverton Zoning Board of Review minutes are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 20th day of July, 2015.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2017
ID # 28792

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